

Discipline, Conduct and Performance

A Guide for Supervisors



**435 MSS/DPC
Civilian
Personnel
Office**

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I INTRODUCTION

When was the last time one of your employees made you angry... or frustrated? Probably not long ago.

Because of those feelings, you may have reacted by:

- ⇒ ignoring the problem and making excuses for the employee's conduct or performance
- ⇒ using the silent treatment
- ⇒ doing the work yourself
- ⇒ arguing
- ⇒ considering a transfer (for yourself or the employee)
- ⇒ giving off hand remarks, hoping to get the point across



So – now you have seen yourself get upset about the problem; you ignored it (it didn't go away); you had a "heart-to-heart" talk (that didn't work); you threatened (with no apparent results); finally, you along with many supervisors feel the consequences of going further just aren't worth the effort.

However, ignoring the problem or getting upset doesn't solve the problem. In fact it gets worse. Correcting others is not enjoyable but, as the saying goes, "If you want an omelet, you have to break a few eggs".

So concentrate on the omelet. Correcting is OK. Correcting is OK--as long as you understand it and use it effectively. It's easy to think of correcting as something negative, such as pointing out to someone that he's wrong. But there is another way to correct. Try to be very tactful. Don't correct anyone in front of others. Most important, remember that most employees want to do things right. Correcting is not trying to "shape them up", rather it's giving employees the information they need to do the job the way they want to do it. This form of correcting is a completely different thing. An employee who makes a mistake can't correct the mistake until he knows what, why, and how: What he did wrong, why it was wrong, and how to do it right.

Employees need three pieces of information:

1. When mistakes are made, the employee has to know what wasn't done correctly or well. Without this input, he'll either continue to think the work is acceptable or may completely misunderstand what was wrong.
2. Your employee has to understand why it was wrong. People don't usually make mistakes because they lack intelligence. They may leave a step out, or do the steps in the wrong order. They may try to reason how it ought to be done--but don't know enough to reason correctly. Unless they find out why what they did was wrong, they can't know just what needs to be done to correct it.
3. Finally, employees have to know how to do the job right, which is different from telling him to do it right. Only when the supervisor tells the employee what to do and shows how to do it does this happen. (Carr, page 80)

Give the employee this information, and if he continues to make mistakes, he may have a problem. But when the employee doesn't have this information, the supervisor is the problem.

Information for and communication with employees is the first responsibility as a supervisor. That's when the omelet is served. This handbook provides supervisors with current and specific information regarding handling troublesome situations involving employees.

You need to be able to answer the following questions before you approach an employee on a performance or conduct problem;

Question 1 WHAT'S THE DIFFERENCE BETWEEN POOR PERFORMANCE AND MISCONDUCT?



Misconduct is generally a failure to follow a workplace rule (whether written or unwritten). Examples of misconduct include tardiness and absenteeism, insubordination, and falsification. Poor performance, on the other hand, is simply the failure of an employee to do the job at an acceptable level. The acceptable level is usually, but not always, documented in written performance standards and is typically defined in terms of quality, quantity, or timeliness. Although it is normal for performance and misconduct to be interrelated, it is important to recognize the difference between the two.

Question 2 WAS THE EMPLOYEE MADE AWARE OF THEIR RESPONSIBILITIES?
This could have been accomplished through any of the following:



Agency, division and branch directives establish employee responsibilities and conduct; such as: AFI 36-703, Civilian Conduct and Responsibility; and AFI 36-815, Absence and Leave. Whether employees read the regulations or not they are responsible for knowing the rules and regulations and following them.

In the area of performance, the employee's position description and performance standards (AF Form 1003) establish the basis for performance requirements. Employees should be provided copies of these documents within 30 days of beginning the job and they should be discussed with employees at least semi-annually.

Specific concerns or individual workplace situations may require the issuance of memoranda to further elaborate on performance or conduct responsibilities for a group of employees or for an individual employee. An example of this is the issuance of a leave restriction letter to an employee who has an unsatisfactory leave record (this is covered in the section on attendance and leave in this handbook).

Formal orientation or training sessions are effective ways to communicate rules and responsibilities to employees and to reinforce or update work requirements.

Oral instruction is the most common method of communicating expectations to employees. Although this method is generally effective, in problem situations, you should put oral instruction in writing. You will see the reasons for this in the documentation segment.

Question 3 AM I APPLYING THE RULES IN A FAIR AND EQUITABLE MANNER?



It is important to remember that rules, regulations and instructions must be applied to all employees under your supervision in a fair and equitable manner. If you have ignored a problem or allowed it to continue without addressing it, this can be considered tacit approval of the practice. For instance, if you have tolerated habitual lateness from other employees, you are vulnerable to being charged with unfair or inequitable treatment if you now request action against another employee for the same behavior.

Be aware of past practices, but do not use the past as a reason for not acting on problem situations. By managing fairly and equitably and establishing sound documentation, you are increasing the chances of taking a supportable action.

Question 4 WHAT ARE THE PERFORMANCE OR CONDUCT DEFICIENCIES, AND WHAT DO I HAVE TO DO TO SUPPORT THE DEFICIENCIES?



Referring to performance, it's easy to come to the conclusion that performance deficiencies are the problem when an employee's work just doesn't get done or the quality of the work is not satisfactory. The tough part is collecting the documentation to substantiate the poor performance. You should review the performance standards to determine what is acceptable and how you measure the performance to come to that conclusion. Then review what you have to back up the unacceptable performance, such as: Copies of poor typing assignments, or incorrectly completed forms. (A discussion on documentation to reflect performance deficiencies follows on p. 9).

Referring to misconduct, there must also be sufficient documentation (such as MFRs or e-mail) to support a request for action based on misconduct. Misconduct includes many things: Falsification of a time and attendance report or travel voucher; tardiness; absence without official leave; misuse of a government vehicle; acceptance of a gratuity. The documentation necessary to support a disciplinary action is found on p. 9.

Question 5 DOES THE OFFENSE IMPAIR THE EFFICIENCY OF THE SERVICE?



Disciplinary and adverse actions can be taken only if they promote the "efficiency of the service." Thus, there has to be a nexus (or connection) between the employee's conduct and the organization's efficient operation or an adverse effect in the supervisor's confidence in the employee's ability to effectively perform their duties in order to take action against an employee.

*This handbook is intended as a guide.
If you, as a supervisor, have a discipline, performance or
employee relations issue, coordinate with your
Employee Relations Specialist, DSN 480-2008,
before you take any action.*

There are no bad soldiers, only bad officers

Napoleon

*Leadership is liberating people to do what is
required of them in the most
effective and the most human way possible*

Max DePree



Planning

Negative feedback, whether concerning performance or misconduct, should never be given casually or off hand. Have your facts and plan your message in advance by writing out the key points and phrases. At this point, you should discuss the problem with:

- ⇒ your supervisor(s) to confirm their support of your course of action.
- ⇒ your Employee Relations Specialist to get reinforcement (if there is a possible drug or alcohol problem the Social Actions Officer may refer you to a counselor for further guidance on how to best approach a particular situation).

Counseling



This can be an emotional time for you and the employee, and you want to be sure you cover all concerns. For most situations, you may want to try the following 3 step approach:

STEP 1

Make sure the employee is fully aware of your specific concerns by giving examples of specific instances and documented evidence of poor work performance or unacceptable behavior. Your approach may be, "I'm concerned about .. I note that your production has been slipping lately. For example ..." Give the employee an opportunity to express their concerns and how they feel the problem can be solved. (Remember to document the discussion on the AF 971 and have employee initial or sign). Emphasize solving the problem and obtain agreement to the solution.

STEP 2

When that doesn't work, another session may be necessary, stating what improvement must be made, the deadline for improvement, and your plan to forward the matter for appropriate action if performance/conduct doesn't improve. Follow up with a letter reiterating what was discussed in the counseling session including what is expected of the employee, the time limit for improvement, and action that will be taken if the employee does not improve.

Remember: Repeated warnings make an action more supportable under grievance or appeal. However, there are times when the first (and only) misconduct is serious enough to warrant disciplinary or adverse action. Always discuss these types of cases with your Employee Relations Specialist. And always document all actions on your AF 971 and have employee initial or sign.

STEP 3

Finally, if the employee does not improve, you have the responsibility to take action by submitting the matter to your Employee Relations Specialist, who will provide you advice and guide you through the process.

Documentation

Either type of action – performance or misconduct – must be substantiated by factual documentation. As a supervisor, you have the responsibility of properly documenting misconduct or poor performance so that there is sufficient evidence (or proof) to support any action that may be taken. Documentation on the AF Form 971 requires your signature and date as well as the employee's signature and date.



Documenting Performance Deficiencies

It is extremely important on performance deficiencies to have documentation concerning:

- What the employee is expected to do or should have done for acceptable performance (AF Form 860).
- How the employee should have known what to do or not do. This may be evidenced by performance standards, written notice, or verbal instruction.
- What the employee failed to do.
- The work product(s) that failed to meet the “acceptable” standards of performance, and examples of the work product(s).
- Information on previous notices of deficiencies.
- Offers of assistance, such as training, guidance, or counseling to improve performance.
- Reasonable time (30 to 90 days) and opportunity to demonstrate acceptable performance.
- Performance during the opportunity period. See the section on unacceptable performance for more information on handling performance deficiencies.

Documenting Misconduct

Misconduct situations must be documented to state:

- What happened (include copies of appropriate documents such as falsified T&A's, etc.).
- Who was involved/who witnessed the incident?
- How did it happen (include mitigating or aggravating circumstances).
- Where and when the incident occurred.
- Cite the violation: Was the employee aware of the rule or regulation? How was the employee made aware?
- Previous warning given (include copies).
- Indicate impact on employer/employee relationship or efficiency of the service.

The following chapters will give you specific aids in approaching the many critical employee issues you may face as a supervisor.

DOCUMENTATION/COUNSELING REPORT FORM

Employee's Name _____

Job Title/Grade _____

Organization _____

Date and Time of Incident _____

Location _____

Length of Service _____

Accurate Statement of What Happened (give facts) and how it happened: (Who, What, When and Where)

What rule or procedure was violated?

Was the employee aware of the rule or procedure? Yes____ No ____

- Was it in writing? Cite regulation, OI or memo.
- Was it communicated verbally? If so, what was stated.

Is the rule or procedure consistently enforced? Yes ____ No ____

What problems does this violation cause?

(Impact on employee/employer relationship or effect on efficiency of the service)

Previous corrective action taken:

Supporting documentation attached: Yes ____ No ____

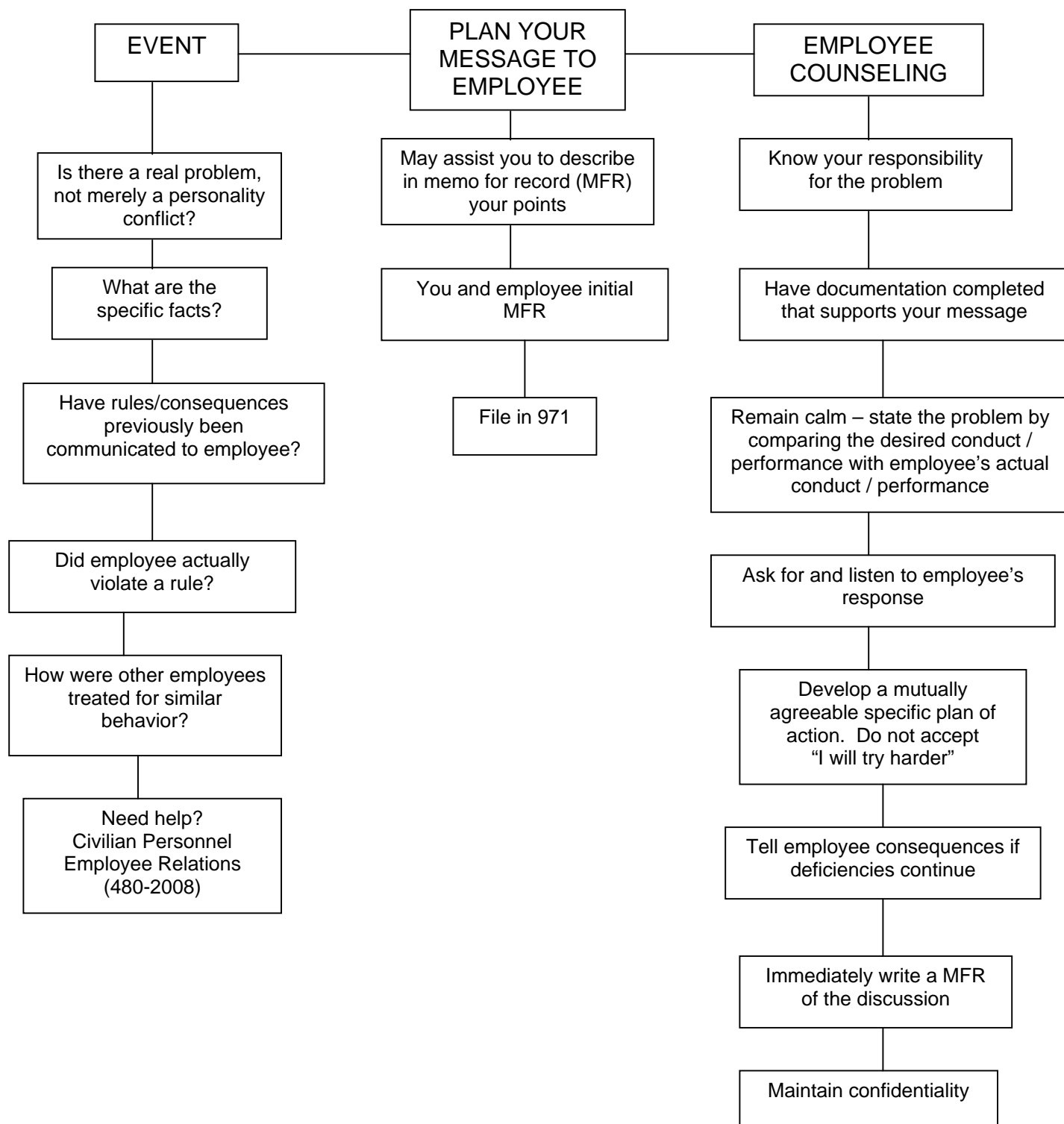
Previous Warning: Same Offense ____ Other offense ____ (attach copies)

Employee counseled: Yes ____ No ____ (attach summary of counseling session)

Supervisor _____ Phone number _____

Office Symbol _____ Date _____

Triage Stages



Remember

Apply rules fairly and equitably

Document problems

Keep employees informed

Counsel employees and give them an
opportunity to improve





The Probationary Period

Purpose

This section outlines the supervisor's responsibility in assessing the employee's performance and conduct during the employee's probationary period.

The Purpose of the Probationary Period

The probationary period is the last step of the examining process and typically lasts one year from the first day of the employee's Federal Service job. It provides the final test: That of allowing you to carefully appraise an employee's performance and conduct to determine whether the employee should be retained or separated. It's also a time for the supervisor to provide the employee with training and guidance.

Supervisor's Responsibilities

Inform probationer of expectations

- Probationers, like other employees, must be given performance standards (AF Form 1003) within the first 30 days on the job. It is important that you discuss the standards with the probationer to ensure the employee understands their duties and responsibilities and your expectations.
- Provide the probationer with an orientation concerning office procedures, leave policy, work schedules and other pertinent information.
- Conduct training to improve and develop job skills.

Keep probationer informed of any problems

- Counsel the employee regularly and provide feedback, both positive and negative, so that the employee understands what is expected and where they are meeting and/or failing to meet those expectations.
- If problems arise regarding performance, provide the employee with training and daily assistance with their work.

Gather Documentation

- Immediately begin to gather documentation reflecting both good and bad work performance and conduct.
- Document counseling sessions to reflect offers of assistance, guidance and training and which show that you provided the employee an opportunity to demonstrate acceptable performance and conduct before separation assistance is requested from your Employee Relations Specialist.



Separation of the Probationer

The probationary period affords you the opportunity to separate an employee without undue formality. Although less detailed documentation is required to separate a probationer than a nonprobationary employee, you will need to show that the employee was made fully aware of what was expected of them and that after a “full and fair” trial period, their performance and/or conduct is not acceptable.

Request for Termination

A request to terminate a probationer should be accompanied by documentation which reflects the following (see sample form):

- The employee was informed and aware of your expectations.
- The employee was given guidance and training.
- The employee was counseled regarding specific conduct and/or performance deficiencies.
- The employee was given an opportunity to improve.
- The employee failed to improve and how.

Begin this process as soon as you see problems occurring with the employee's performance and/or conduct. Don't wait until the end of the probationary period (one year) to address a problem. Start from the beginning.

CONTACTS

Should you have problems or concerns regarding a probationer, or any employee's performance and/or conduct, contact the Employee Relations Section for guidance and assistance.

RECOMMENDED SEPARATION OF A PROBATIONER

Name of Probationer _____

Commencing Date of Probationary Period _____

Title, Series, Grade _____

Organization _____

Name of Supervisor & Phone No. _____

1. Describe performance and/or conduct deficiencies. Be specific give dates, time, places, circumstances.

2. How were expectations communicated to employee?

_____ Performance Standards – Attach copy

_____ Regulation/directives – Attach copy

_____ Verbal Instruction – Document

4. Describe the training and guidance given to the employee especially in regard to the deficiencies.

4. Was the employee counseled and given an opportunity to improve? Provide dates, summarize counseling sessions, and attach copies of any written memos.

5. Describe how the employee failed to improve.

Supervisor's Signature and Date

Provide a cover memo to Chief, Employee and Management Services Section, 435 MSSQ/DPCE, requesting termination of probationer. Attach copies of documentation that reflect conduct/performance problems.

Actions Based on Unacceptable Performance



Purpose

This section describes procedures for initiating action based on an employee's unacceptable performance in a critical element of the performance standards.

Performance appraised as "unacceptable/not met" in an element is grounds for reassignment, demotion, or removal.

A performance-based action may be initiated at any time an employee's performance, compared to performance standards, falls below the acceptable level in any critical element.

Keep the Employee Informed

A notice of unacceptable performance or a poor performance appraisal should never come as a complete surprise to an employee. The supervisor is responsible for keeping employees informed regarding the current level of performance. The best way to handle poor performance issues is to take action to avoid performance problems before they occur. Such preventative actions include:

1. Communicating clear performance standards and expectations to employees. (Consider sharing your supervisor's performance expectations with your staff.)

If your employees don't understand what is expected, it will be very hard, if not impossible, for them to meet those expectations. Providing clear expectations doesn't necessarily require you to lay out precisely written, detailed instructions on every performance component. Generally, the question you should ask yourself is: "Would a reasonable person understand what was expected?"

2. Providing regular and frequent feedback on performance.

Such feedback, both positive and negative, whether given in regularly scheduled meetings or in unscheduled discussions, is crucial to ensuring that expectations are understood. Frequent feedback lessens the likelihood that an employee will be surprised if it becomes necessary to take formal steps to resolve poor performance. Always look for opportunities to confirm that your employees understand what is expected.

3. Rewarding and recognizing good performance, informally and formally.

Recognizing good performance is simply another way of clarifying expectations.

A recurring theme in successful resolution of performance problems is that taking action early is always better than waiting. This statement is definitely true when considering ways to prevent performance problems. Early communication and early feedback (positive and negative) are all good ways to prevent future performance problems. Investing time early is always time well spent.

When counseling the employee regarding performance, the supervisor should cite the employee's strengths and weaknesses and give an overall assessment of the employee's performance. Refer to performance standards to explain why you feel the employee's performance is not at the fully successful level.

Do not save up instances of unacceptable performance until the end of the formal performance appraisal period. Failure to communicate concerns may result in the mistaken impression that the performance is satisfactory. Tell the employee immediately when an instance of unacceptable performance occurs, what made it unacceptable, and what the employee must do to improve performance to the fully successful level.



Document Performance Discussions

The supervisor should document counseling sessions with the employee. This is important because actions based on performance are subject to review by uninvolved parties who will not know the background. Use the AF Form 860B to provide the employee a copy regarding the substance of the counseling sessions.

The documentation maintained by the supervisor should establish that the employee was informed of performance standards, area needing improvement, and methods for achieving improvement. Writing the employee a memo is the easiest and most direct way to document a detailed, specific counseling session.

Documentation guidance is also found on p. 9-10.

Notice of Unacceptable Performance

If an employee's performance becomes unacceptable, the supervisor should contact their Employee Relations Specialist. Provide documentation that covers when, where, what and how the employee's job performance is deficient. Your specialist will assist by providing you with a sample written notice of unacceptable performance informing the employee of:



The critical performance element(s) in which performance is unacceptable

- What the employee must do to perform acceptably in the element(s)
- What the supervisor will do to assist the employee in improving performance (e.g., training, extra work reviews, etc.)
- The time allowed for an "opportunity to improve" (generally 30-90 days)
- Possible consequences of failure to improve, including reassignment, demotion, or removal

During the opportunity to improve period, the supervisor must assist the employee by providing training, increased supervision, documentation of the employee's progress, and feedback.

After the opportunity to improve period ends, the supervisor must decide whether the employee's performance has improved. If the employee's performance has improved to the "acceptable" level, the employee should be informed in writing, congratulated for the improvement, and urged to maintain the fully successful level of performance. Continue to provide assistance, guidance and feedback. If the employee's performance has not improved, contact the Employee Relations Section for guidance. Appropriate action will be determined through discussions between the Employee Relations Specialist and the supervisor.

Extension on the Opportunity to Improve

If the employee has demonstrated some improvement, and the performance is still not “acceptable”, but it appears that, given further opportunity, it could become acceptable, the supervisor (coordinated with the Employee Relations Specialist) should inform the employee in writing of the reasons for and length of the extension.

Requests for Leave

Another issue that sometimes “stumps” supervisors is what to do when an employee requests leave during the opportunity period. You should consider each request for leave based on the specific circumstances in the request. Know the rules for approving or disapproving leave and get some technical advice from your Employee Relations Specialist before you deny any leave during this time. Additionally, keep these thoughts in mind:

- An employee on approved leave (annual, sick, or leave without pay) cannot be penalized for work that is not completed while on approved leave.
- An employee should be aware of agency (or office) procedures for requesting leave and for providing medical documentation (especially important for accommodation requests). The employee should also be aware of what disciplinary action the agency may take if these procedures are not followed.
- Be sure you understand the various family-friendly leave entitlements available to employees, such as the *Family and Medical Leave Act*.
- If an employee is on approved leave for a significant period of time during the opportunity period, you may want to extend the period to allow the employee a “reasonable” time on the job to improve.

Deciding What Comes Next

Deciding what comes next depends on the employee’s performance at the conclusion of the opportunity period. If the employee has reached the acceptable level of performance, change the rating to “acceptable” and keep providing feedback and encouragement to the employee. If the employee is still performing unacceptably, you must determine the best solution. Your options include reassignment, demotion, or removal.

Reassignment

If an employee’s performance remains unacceptable after the opportunity to improve period ends, the employee may be reassigned to a vacant position at the same grade, if it is believed that the employee could perform acceptably in the new position. If a position is available, but it is believed the employee could not acceptably perform the duties of the position, the supervisor should be prepared to state the basis for the belief.

Removal or Demotion

If the employee's performance remains unacceptable after the opportunity to improve period ends, and an extension or reassignment does not appear appropriate, demotion or removal must be considered. Demotion is appropriate if it is believed the employee could perform acceptably in a lower graded position and one is available. Removal is appropriate if no position is available in which the employee could perform acceptably.

The following documentation should be brought to your Employee Relations Specialist for assistance:

- Performance standards
- Statement of specific problems, including your expectations, how the employee should have known what to do, and actual performance
- Examples/work products
- Documentation regarding counseling
- Documentation regarding offers of assistance
- The notice of unacceptable performance
- Signed statements of supervisors or clients, as applicable

If removal or demotion appears appropriate, your Employee Relations Specialist will assist you in preparing a notice of proposed action (based on your documentation) to give to the employee. The notice provides the employee at least 30 days advance notice of the proposed action; describes instances of unacceptable performance occurring within the last year, including the opportunity to improve period; and informs the employee of the right to respond orally and/or in writing and to be represented.

After consideration of any employee response, the supervisor issues a written decision. If the employee is removed or demoted, the decision is appealable to the Merit Systems Protection Board.



Within Grade Increase Denial



Purpose

This section outlines the steps required to deny an employee's within grade increase (WGI).

When a WGI Should Be Denied

An employee's WGI should be denied when the employee's work performance falls below "acceptable."

Basis for Determination

Your determination must be based on the most recent appraisal of the employee's performance during the waiting period. If that appraisal is not consistent with the current performance of an employee, you must prepare a new appraisal.

Communication of Performance Requirements

Employees must be informed in writing of the specific performance requirements at the "acceptable" level of competence. This is accomplished by providing the employee with performance standards, guidance, counseling, and written and/or verbal instruction.

How to Deny a WGI

If at the due date of the WGI, the employee's performance is not acceptable, the negative determination must be communicated to the employee in writing as soon as possible after completion of the waiting period. (See your Employee Relations Specialist for assistance).

The notice must contain:

- Specific reasons for the denial of the WGI.
- What the employee needs to do to improve performance.
- The employee's right to request reconsideration of the determination within 15 days of receipt of this notice.



Documentation Required to Support Denial of a WGI

The following documentation must be provided to your Employee Relations Specialist when a WGI is denied:

- Performance standards.
- Performance appraisal, AF Form 860A, reflecting performance at less than the acceptable level.
- Documentation relied upon to support your negative determination. This may include copies of work documents, position papers, typing, reports, etc.

Continuing Evaluation After Withholding a WGI

You may grant the WGI at any time after you determine that the employee has demonstrated sustained performance at an acceptable level of competence. It usually takes between 20 and 90 days (but can be longer) to determine if an employee has demonstrated sustained performance at an acceptable level depending on the nature of the employee's work. At minimum, you must make a determination after each 52 calendar weeks following the original eligibility date for the WGI. The WGI is not retroactive to the original due date.

Postponement of Determination

An acceptable level of competence determination may be postponed when:

- An employee has not been informed of the specific requirements for performance at an acceptable level of competence at least 90 days prior to the end of the waiting period; or
- An employee is reduced in grade because of unacceptable performance and will become eligible for a WGI within 90 days.

The employee shall be informed that the supervisor's determination is postponed and of the specific requirements for performance at an acceptable level of competence. The period of postponement shall be for a minimum of 90 days. If at the end of this period, the employee's performance is acceptable, the WGI will be retroactive to the original due date. If a determination is made that the employee is not performing at an acceptable level of competence, follow the procedures for a WGI denial.

IF A WGI INCREASE COMES DUE IN THE MIDDLE OF AN OPPORTUNITY PERIOD: The within-grade-increase determination is based on the most recent rating of record as long as it was issued within the last year. You will issue a new rating if the most recent rating does not reflect the employee's current performance.

Attendance and Leave

Purpose

To outline supervisory and employee responsibilities; and provide corrective action if problems occur with an employee's leave.

Supervisor's Responsibilities

The taking of annual leave is not an absolute right of the employee. You as a supervisor have the right to control when the leave can be taken. The approval of leave is a discretionary matter reserved to supervisors.

Supervisors and other management officials are delegated authority to administer leave policies, including:

- Approving/disapproving leave request.
- Scheduling employees' leave so that work requirements are met.
- Controlling absences and leave according to USAF policies and procedures.
- Taking appropriate action when employees are suspected of abusing their leave privileges.



Annual Leave Approval

Annual leave is a period of absence granted to allow employees periods of time off for rest and recreation and for personal and emergency purposes. When an employee requests leave, the supervisor must consider several factors in determining whether to approve or disapprove the request. The factors which determine whether an employee's leave request can be granted are:

1. Workload.
2. Workforce requirements.
3. Number of employees who have already obtained approval to be absent for the same period.
4. The significance of the reason (may or may not be considered).

THE ABOVE FACTORS ARE LISTED IN THE ORDER OF THEIR IMPORTANCE.

The first and foremost consideration is the workload requirements of the employee and their work unit. Naturally an employee may rarely be completely free of work assignments or have an empty "In" basket on their desk. A supervisor should consider the priority of the work assignments and responsible deadlines that have been set. In some work situations, it may be necessary for the supervisor to post a notice and notify all employees that during a particular time period, no leave requests will be approved (i.e., end of the fiscal year, end of the budget cycle, special project, special reporting requirements, etc.). Employees should be notified far enough in advance so they can make plans around these periods.

Secondly, the size of the workforce that is needed to ensure the efficient operation of the office or workplace should be considered. This is especially true during those times of the year when a majority of the employees wish to be off (i.e., in conjunction with a holiday, summer vacations, etc.). A supervisor should determine how many employees are needed and consider their perspective positions when setting policy on office coverage.

The third factor is prior leave approvals for other employees. If a leave request is disapproved because the employee cannot be spared, the supervisor should discuss with the employee alternate dates when the leave request could be approved. Management has the primary responsibility for planning and effectively scheduling annual leave throughout the leave year. Supervisors are required to obtain tentative leave schedules in January of each year to allow employees the chance for advance planning. Any dispute between employees desiring the same vacation period should be resolved on an equitable basis such as length of service or other leave dates scheduled. Supervisors should inform their subordinates as soon as possible when they are unable to approve a leave request or desired leave date.

The fourth factor should receive the least amount of consideration. Normally, supervisors should be able to make a decision after considering the first three factors. Employees are not required to provide a reason for the request for annual leave, however, they may volunteer the information. Employees have an obligation to request leave in a timely manner and as far in advance as possible. Employees should be responsible for planning their personal affairs in such a manner that they can give their supervisors reasonable time to consider the factors that have been outlined.

Emergency Leave

On occasion, an employee may be unable to request leave in advance if an emergency situation occurs. An employee is responsible for reporting unforeseen absences within two hours of the beginning of their workday to a supervisor or designated individual. It is important that each employee is aware of AF policy and is held responsible for adhering to the guidelines.

Sick Leave Approval



Sick leave approval procedures are different from the procedures for annual leave. A supervisor cannot control sick leave because of its emergency nature. Sick leave may be granted for:

- Incapacitation to perform regular duties.
- Medical, dental or optical examinations or treatments.
- Confinement due to pregnancy.
- Exposure to a contagious disease (defined as quarantined to the home by a qualified physician) or care for an immediate family member so exposed (this is a rare occurrence).

Normally, an employee calls in to report his/her condition and requests sick leave as soon as possible after the start of the workday. Sick leave is requested in advance for those situations such as scheduled appointments and pregnancy confinement. Supervisors should properly counsel employees on the use of sick leave and discourage them from abusing the privilege. However, the employee is responsible for proper use of sick leave.

Controlling Employee Absenteeism

Correcting leave problems should be no different than correcting any other management problem; however, most managers view it as a tremendous task. The supervisor or manager should take a step-by-step approach as outlined below to correct the leave problem. Failure or delay in taking appropriate action, however, only makes correcting the problem that much more difficult. Listed below are some typical leave problems:

- Excessive absenteeism
- Excessive sick leave usage
- Absent without leave (AWOL)
- Tardiness (unexcused and excessive)
- Late return from lunch
- Leaving work without permission
- Frequent requests for emergency leave



Identify the Problem



This sounds easy enough; at least that is what many supervisors think until they actually sit down to do so. Initially supervisors only see results of a problem. The tough part is **DEFINING THE PROBLEM**. In defining the problem, **COMPARE WHAT SHOULD BE HAPPENING WITH WHAT IS HAPPENING**. For example, an employee has a problem with excessive absence without leave (AWOL). The supervisor has set procedures for reporting unforeseen absences and the employee is not following those procedures.

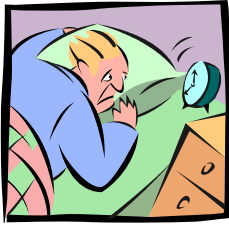
As a result, the employee is charged AWOL for those absences. AWOL is not the problem, but only a result of the problem. The problem is the employee's failure to follow instructions. The charging of AWOL can result in further disciplinary actions.

Analysis of Leave Records

If a supervisor suspects an employee is abusing leave privileges, it is essential that the time and attendance records be reviewed and analyzed. From this review, you should be able to determine if a particular pattern of absence is evident (Monday or Friday off; the day immediately preceding or following a holiday; during peak workloads, etc.). The records are documentation to justify confronting the employee with what you perceive as a problem.

Discussion with the Employee/Counseling

This step requires a great deal of tact and diplomacy. This should be conducted in an atmosphere similar to a counseling session. The supervisor must ensure proper use of leave and that the employee is aware of proper leave regulations and the practices specific for their office or workplace. An employee should be confronted as soon as a problem is apparent. By not addressing the problem an employee is led to believe that their behavior is condoned. Share your observations and/or analysis of this situation with the employee. Offer them the opportunity to comment and allow sufficient, uninterrupted time for the employee to converse on the subject. Do not allow other unrelated topics of discussion to enter into the session, such as performance, lack of training, prejudiced feelings, other employees, etc.—concentrate on the specific leave problem. Inform the employee what you expect and how to improve.



Failure to Report for Duty

Each employee has an established tour of duty and is expected to be punctual and in daily attendance unless on approved leave. Supervisors should ensure that employees are aware of their work schedule and the established leave policy.

On occasion an employee may fail to report for duty or report their absence. If an employee is in regular attendance and is not suspected of leave abuse, failure to report for duty would be considered unusual behavior. If they do not call in for more than one workday on the first occasion, the supervisor may make a good faith attempt to ascertain the whereabouts of the employee (i.e., co-workers, car-poolers, and emergency contact). This is to rule out the possibility of a disaster or serious problem and should be done in a judicious manner for the express purpose of ensuring the health and welfare of the individual. After the first instance, the employee should be allowed the opportunity to explain the circumstances surrounding their absence and failure to call the supervisor upon their return to duty. You can decide if the employee has presented a legitimate, justifiable reason for their behavior and the appropriate leave to charge the employee. Normally, an employee is AWOL for an unauthorized absence. You have the discretion to change the AWOL charge to an approved leave category, such as sick leave, annual leave, or leave without pay (LWOP).

The employee should be counseled and warned in writing about the failure to report for duty, even if unusual, aggravating or mitigating circumstances are present. If this behavior continues, disciplinary action is recommended. You should discuss your case with your Employee Relations Specialist.

Tardiness

Employees are expected to observe their designated tours of duty and to be punctual in reporting to work and returning from lunch. Occasionally an unavoidable situation may prevent an employee from reporting to work on time, (i.e., traffic, adverse weather conditions, emergencies, etc.). In some cases supervisors can excuse up to one hour of absence without charge to leave or loss of pay. A supervisor must use discretion in accepting the employee's reason for tardiness. Normally, if an employee has a good attendance and punctuality record, has not been cautioned or disciplined for leave abuse and the occasion for such excuse is infrequent, the supervisor may excuse the tardiness. When the supervisor does not excuse the tardiness, the employee may apply for annual leave or leave without pay in 15-minute increments. The leave is granted at the discretion of the supervisor. When, in the judgment of the supervisor, the employee's reason for absence is not acceptable, or when an employee is repeatedly tardy and the employee has been previously warned, the supervisor may charge the employees' tardiness to AWOL. In addition, supervisors may decide to initiate disciplinary action against employees based on the AWOL charges.



Excessive Leave Usage

Even though supervisors have the discretion to approve or disapprove leave, occasionally an employee's record may show excessive leave usage. Most of the time the leave has been approved in the past, but a supervisor may begin to notice the frequency of absence. It may be advisable that supervisors remind employees of their responsibility to plan their personal affairs in such a manner that they are in regular attendance at work. Supervisors should provide employees the opportunity to talk about problems if they so choose. Supervisors should also emphasize the relationship between attendance and performance and how it could possibly affect an appraisal rating. Performance can only be evaluated when employees are present and performing their assigned tasks.



Documentation

- **TIME AND ATTENDANCE (T&A's):** Should properly reflect the leave charge. If employees are granted leave, including Leave Without Pay (LWOP) and it is approved by the supervisor, an employee cannot be disciplined for the absence at a later date. Only AWOL can be the basis for disciplinary action.
- **MEMORANDUM FOR THE RECORD:** Is a statement written to provide proper documentation for a particular event or occurrence? These documents should be prepared immediately following a meeting or session so that an accurate account can be recorded.
- **OTHER RECORDS:** May include, but is not limited to, SF-71's (Application for Leave), time sheets, etc.
- **WITNESS STATEMENTS:** If another individual was in a position to observe a particular situation, it may be wise to obtain a witness statement. (Example – you charge an employee with 2 hours AWOL for being away from the worksite without permission and someone saw the employee at an unauthorized location (such as the bowling center). You should consider having the witness make a statement).
- **INSTRUCTIONS AND WRITTEN OFFICE PROCEDURES:** You should have available all pertinent instructions and written procedures. You must be able to verify they are current and apply equally to all employees on your staff. You should be able to cite specific violations of written policy when confronting the employee on leave abuse problems.

Creating Alternative Solutions

Each situation usually presents itself with a number of possible solutions for correcting the matter. You as a supervisor must decide what is the best course of action to bring about favorable results. Initially, you can consider soliciting suggestions from the employee. They may make a confession and commit themselves to trying to improve the situation. Secondly, you may consider adjusting their starting time if the reasons for tardiness are legitimate (traffic, weather, etc.).

Official Warnings

After you have counseled the employee, it may be a good idea to follow up with written letter of warning or caution. You are making this situation a matter of record and indicating to the employee the seriousness of the issue. Attached is a sample letter that may be used to communicate your concerns to the employee. The sample warns the employee of suspected leave abuse. Your Employee Relations Specialist will assist you in preparing a letter (requiring medical documentation to support all sick leave requests), or a third restriction letter (used to address all absences).

Disciplinary Actions

After you have confronted the employee and brought the problem(s) to his/her attention and the employee shows no substantial improvement, you must decide whether to take appropriate action, such as:

- Oral Admonishment
- Letter of Reprimand
- Suspension
- Removal

Generally, action should be taken in the order outlined above, depending upon the circumstances of the case.

Actions taken should illustrate the principle of progressive discipline. Choose the minimum action likely to correct the improper behavior and consider unusual, aggravating, or mitigating circumstances. The action should be timely to correct behavior before it becomes a habit.

Sample Warning Letter Concerning Sick Leave Usage

FROM: Office Symbol

SUBJECT: Sick Leave Usage

TO: Employee's Name, Office Symbol

This letter concerns your sick leave record from _____ to _____. Official records indicate during that period you have used _____ hours of sick leave. Because of the extensive amount of sick leave you have used, as shown in attachment 1, it appears that you may have abused your sick leave privileges.

Sick leave is to be used when you or a family member are physically incapacitated to do your job or for dental, optical, medical examination or treatment. When you are absent on account of sickness, you should notify me within two hours after the beginning of the duty for each day of such absence. Requests for sick leave for medical, dental or optical appointments should be submitted for approval prior to taking leave.

If your sick leave record does not show significant improvement, consideration will be given to requiring a medical certificate to support all future sick leave requests.

You may be sure that it is my desire to assure your future success on the job. If I can be of any assistance to you, please feel free to discuss this matter with me.

SUPERVISOR'S SIGNATURE BLOCK

1 Atch
Sick Leave Usage

I acknowledge receipt of this notice on

Date Employee's Signature

(NOTE: The acknowledgement of receipt is typed on the copies only.)

Dealing With Employee Insubordination



Supervisors must determine the job that needs to be performed and have the right to direct the work and to control all office operations. If an employee fails to do what is asked it may be insubordination or failure to follow instructions. Sometimes these issues aren't clear-cut. What is the difference? Definitions below clarify. The general rule is that employees have an obligation to obey a legitimate order unless it would be unsafe to do so. They are to do what they are told, even if they do not want to, and may file a grievance later using the established channels.

Definition

- Insubordination reflects deliberate, willful and intentional failure to comply with lawful and reasonable instructions of an official superior, or the use of abusive or insulting language to an official superior. For example: If a supervisor gives an employee instructions that are reasonable and clearly understood and the employee refuses to comply, this is considered insubordination.
- Failure to follow instructions is when an employee fails to carry out a written or verbal instruction. For example: An employee is told to submit a report by close of business and fails to do so.

In either situation, the order or instructions must be reasonable and supervisors should give clear, specific work-related instructions concerning what is expected from the employee. It is important to tell the employee what, when, why, where, who, and how the job is to be done.

Documentation



Supervisors will need to provide supporting documentation which answers the following questions:

- What was the specific instruction and date given? (What was the employee told to do?)
- What occurred? (How did the employee fail to carry out the instruction?)
- How should the employee have known what was expected? (e.g. directives, written or verbal instruction, previous warning/counseling)
- Was it deliberate or unintentional?
- Was the instruction reasonable? If so, how?
- Where there previous warnings or counseling?

This documentation should be submitted to your Employee Relations Specialist. See p. 9-10 for additional information on documentation.

Dealing with Falsification of Official Documents



Purpose

To familiarize supervisors on handling and reporting incidents of falsification of official documents.

Types of Falsification

Falsification of official documents is an act or failure to act which indicates deliberate misrepresentation, fraud, deceit, or concealment of a material fact either for personal gain or administrative convenience (willful failure to keep accurate records). Such falsification or concealment is grounds for severe disciplinary and/or legal action. Types of falsification might include:

- Falsification of Travel Voucher A traveler's claim for reimbursement of money spent in travel must accurately reflect the facts involved in every instance so that any violation or apparent violation may be avoided. For example: If an employee in travel status voluntarily stays with relatives or friends, rather than accepting lodging furnished by the government, this fact must be stated on the travel voucher. If travel is not recorded exactly as performed, the travel reported on the voucher will be considered as falsified.
- Falsification of Time and Attendance (T&A) Reports: Employees shall carefully review their T&A reports and supporting documents to make sure that appropriate leave is recorded for all absences (such as charging sick leave when annual leave is appropriate). Another example of falsification would be charging overtime when such time was not actually worked.
- Falsification of Application for Employment/Promotion. Making false entry which would have adversely affected the selection for appointment or promotion (such as stating no conviction or arrest to a felony, when in actuality the employee was convicted/arrested; inaccurately reporting higher education credits, etc).
- Falsification of Post Allowance or Living Quarters Allowance Documents: Stating more dependents living at the residence than actually are; failing to report that a portion of quarters is leased/sublet to another individual; failing to report dependents when they depart/arrive the foreign area.



Documentation

The following is a guide to documenting cases of falsification. Copies of official documents pertaining to the falsification should be submitted to your Employee Relations Specialist along with a letter detailing the following points:

- What was falsified and how? Include any statements obtained from witnesses concerning the misconduct.
- How the employee should have known what to do. For example: Directive, instruction, previous warnings/counseling.

- Whether the falsification was deliberate, unintentional, negligence, or for personal gain. If it was for personal gain, what was the actual cost verses the reported cost? For example, what was the lodging cost when in actuality no lodging was incurred.

Examples of documentation supporting the falsification may include T&A reports, time sheets, travel vouchers, work reports.

Governing Ethics and Conduct, Conflicts of Interest, Outside Employment and Financial Interest



Supervisor's Responsibilities

As a supervisor, because of your day-to-day relationship with your employees, it is your responsibility to ensure that principles of ethics and conduct are maintained. Some of the problems you will face as a manager will not involve conduct or activities on the job, but will arise because an employee has outside interests that are incompatible with their federal position. When off-the-job conduct or interests are involved, supervisors will sometimes look the other way unless the employee's day-to-day performance is affected. However, standards of ethics and conduct are imposed on all employees and you must become familiar with them; impose them equally upon yourself and on the employees you supervise; and be prepared to advise your employees should they come to you with questions concerning matters covered by these regulations.

Employee Responsibilities

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees is essential to ensure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The confidence of citizens in their Government is influenced not only by the manner in which employees serve the public, but in the way they conduct themselves in the eyes of the public. The avoidance of misconduct and conflicts of interest on the part of Government employees through informed judgment is indispensable to the maintenance of these standards.

Prohibited Conduct-General

An employee shall avoid any action that may result in or create the appearance of:

- Using public office for private gain.
- Giving preferential treatment to any person.
- Impeding Government efficiency or economy.
- Losing complete independence or impartiality.
- Making a Government decision outside of official channels or affecting adversely the confidence of the public in the integrity of the Government.

Conflicts of Interest

Definition

- Conflict of Interest – A situation where an employee's private interest, usually of an economic nature, conflicts with their Government duties and responsibilities.
- Appearance of conflict of interest – A situation in which it could reasonably be concluded that an employee's private interest is in conflict with their Government duties and responsibilities, even though there may not actually be such a conflict. Federal employees should meet a certain standard of ethics and conduct that promotes confidence, trust, and respect by citizens in their Government and avoid any action which might result in or create an actual or apparent conflict of interest.

There are two areas where conflicts of interest usually occur; outside employment and financial interests. A discussion of each follows:

Outside Employment and Activities

Prohibited Activity

Employees are not prohibited from seeking or obtaining outside employment. However, their employment must not conflict or appear to conflict or otherwise interfere with their official duties.

Interference with the employee's duties refers to any work activity which tends to impair the employee's mental or physical capacity to perform their duties in an acceptable manner. This also includes any outside employment that takes the employee's time and attention during official work hours.

The following are examples of prohibited outside employment and activities which will assist you in recognizing similarly prohibited employment and activities.

- A housing referral employee works part-time for a real estate agent.
- An employee has a private cosmetics business. They attempt to sell products to their co-workers during work hours and/or on Government premises.

The following are examples of acceptable outside employment and acceptable outside employment and activities.

- An employee serves as a volunteer at a local hospital.
- An employee teaches college classes in the evening.



Financial Interests



Purpose

An employee is prohibited from having a direct or indirect financial interest that conflicts substantially, or appears to conflict, with their duties and responsibilities as a Government employee.

Policy

The purpose of financial interest regulations is not to preclude a Government employee from holding investments or from entering into financial transactions the same as any private citizen. However, government positions are considered to be a public trust, and therefore, the appearance of financial conflict must be avoided.

The following is an example of a prohibited financial holding:

- A procurement or contracting specialist owns stock in a company with whom the Government regularly contracts for goods/services.

Remedial Action

Violations of any ethics, conduct, or conflict of interest regulations may be grounds for remedial action. You, as the supervisor, should report any suspected violation immediately to your Employee Relations Specialist, where a determination will be made as to whether or not disciplinary action is appropriate.

Documentation



The following information should be provided to document a conflict of interest:

- Describe the conflict.
- Was the employee counseled/warned? Does it affect the supervisor's confidence, public trust in the employer-employee relationship? How?

Bribery and Acceptance of Gratuities

Purpose

This section outlines the supervisor's responsibilities regarding bribery and acceptance of gratuities.

Definition

As a supervisor, it is vitally important that you be able to recognize and understand what action to take should a bribe or gratuity be offered to you or one of your subordinates. Therefore, one must first be able to distinguish between a bribe and a gratuity.

BRIBE: Anything, but especially money, that is given or offered to a public official to influence the official in their favor in the performance of any official duty.

GRATUITY: A free gift, a present, or a small monetary payment to a public official for services rendered and made without additional obligations, claims or demand.

The key word is "influence." Influence is the reason or basis for a bribe, but is only implied with a gratuity, if at all.



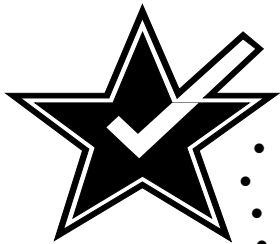
Political Activity

Purpose

To outline what is permitted and prohibited for Federal employees related to Political Activity

Employee Responsibilities

The Hatch Act Reform Amendments of 1993 permit most Federal employees to take an active part in partisan political management and partisan political campaigns. While Federal employees are still prohibited from seeking public office in partisan elections, most employees are free to work, while off duty, on the partisan campaigns of the candidate of their choice. The law affects all civilian employees in the executive branch of the Federal government. Part time employees are covered except for those working on an occasional or irregular basis. The following summarizes the do's and don'ts for employees engaged in partisan activities.



Permitted

- May be candidates for public office in non-partisan elections
- May register and vote as they choose
- May assist in voter registration drives
- May express opinions about candidates and issues
- May contribute money too political organizations
- May attend political fund-raising functions
- May attend and be active at political rallies or meetings
- May join and be an active member of a political party or club
- May sign nominating petitions
- May campaign for or against referendum questions, constitutional amendments, municipal ordinances
- May campaign for or against candidates in partisan elections
- May distribute campaign literature in partisan elections
- May hold office in political clubs or parties including serving as a delegate to a convention

Prohibited

- May not use their official authority or influence to interfere with an election
- May not solicit, accept or receive political contributions unless the contributor and the recipient are both members of the same Federal labor or organization or employee organization and the one solicited is not a subordinate employee
- May not knowingly solicit or discourage the positive activity of any person who has business before the agency
- May not engage in political activity while on duty
- May not engage in political activity while in any government office
- May not engage in political activity while wearing an official uniform
- May not engage in political activity while using a government vehicle
- May not be candidates for public office in partisan elections
- May not wear political buttons on duty



Grievances

Policy

Air Force policy is to resolve, as quickly and fairly as possible, employee grievances/concerns which adversely affect the mission of the Agency.

Definition

A Grievance is a request for personal relief in a matter of concern or dissatisfaction which is subject to the control of the Air Force.

Employee Coverage

The grievance system is available to all employees regardless of the nature of the employee's appointment.

Grievance Presentation

A grievance may be presented to the first level supervisor who can make a decision on the matter being grieved. If the problem involves a matter or action directly involving the supervisor, the employee may present it to the next level supervisor. An informal grievance can be presented either orally or in writing (written is recommended). The employee must specifically identify the matter of concern; indicate that they are initiating the grievance process; and specifically state the corrective action (personal relief) desired.



Grievant's Rights

The grievant has rights to:

- Freedom from restraint, interference, coercion, discrimination or reprisal in presenting a grievance.
- Be accompanied and advised by a representative of their choosing unless there is some conflict of interest.
- A reasonable amount of official time to present the grievance.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) techniques may be voluntarily used by the people who are involved. These are techniques that cover a broad range of joint problem solving processes. Some of these processes are mediation, facilitation, and conciliation. ADR is a supplement, not a substitute, for traditional conflict resolution such as suing or formally grieving. Because ADR is voluntary and decisions are reached through agreement between the people involved, ADR often produces decisions that have greater credibility and support for those involved. ADR simply provides additional tools to resolve disputes. Contact your Employee Relations Specialist at 480-2008, if you would like to try ADR to resolve a grievance.

Grievant's Responsibility

The grievant is responsible for:

- Complying with appropriate time limits (within 15 days of a specific act or any time on a continuing problem).
- Furnishing sufficient detail to clearly identify the matter being grieved.
- Specifying the personal relief being requested.

Supervisor's Responsibilities

You should meet with the employee to discuss their grievance and attempt to resolve the grievance through correction, adjustment, or other appropriate action. At times employees present complaints without specifically stating they will pursue the issue(s) through the grievance process. Make sure you and the employee have reached a clear understanding of whether or not the complaint is being filed under the grievance procedure; the matter or issue that is the subject of the grievance; and the personal relief desired. Allow the employee to fully state their concerns. Then go back and discuss each issue and possible ways to resolve the matter.

Informal resolution is encouraged at any stage of the grievance procedure. In discussing possible relief, be flexible and open-minded. If you are at a stalemate, try to offer some alternative suggestions for relief that may be agreeable to you and the employee. For instance, in a performance appraisal grievance, you may offer to re-evaluate the employee in 6 months and meet with the employee on a biweekly or monthly basis to discuss their performance. Or you may offer additional training to help the employee improve in that performance element. The point here is that it is better to resolve your differences and get back to work than allow them to fester. While a grievance is under consideration there is a tendency for tempers to flare; more differences to arise; other employees become embroiled in the controversy; and the office to become nonproductive. Before concluding, summarize your understanding of the matter and whether relief can be granted.



Notice of Termination of Informal Grievance Procedures

If resolution is not achieved, you must advise the employee in writing within 15 calendar days of the date the grievance is initiated. Your Employee Relations Specialist will assist you to ensure employee rights are included in the response.

The notice must:

- Outline the issues in the grievance and the attempts that were made to resolve them.
- Inform the employee you are unable to resolve the issue in the informal stage.
- Advise the employee that a formal grievance must:
- Be in writing and signed.
- Clearly state the issue(s)
- Specify the personal relief sought.
- Include a statement that the employee has not filed an appeal or complaint on the same issue(s) under any other appellate or complaint system, or with any other agency.
- Give the name, address, and telephone number of the employee's representative, if any.

Documentation



You will need to have all the material on which you relied to make your decision regarding the grievance matter. In a performance appraisal grievance, for instance, you will need to have available examples of work products and performance standards. You should also document all your discussions concerning the matter in question.

EEO Discrimination Complaints



Purpose

This section is primarily aimed at explaining the reasons for attempting settlement of an EEO discrimination complaint. This section does not outline the complaint procedures.

Many EEO discrimination complaints basically emanate from a break down in communication. The individual perceives they have been denied a right or benefit based on the prohibited factors covered by Title VII.

Reasons Why the Agency Could Be Vulnerable in EEO Discrimination Complaints

Even though you think you did not discriminate against an employee, the agency becomes vulnerable in an EEO complaint for some of the following reasons:

- Lack of supporting documentation (i.e., little documentation to support termination of a probationer or WGI denial).
- Contradictory statements from witnesses.
- Inconsistent management action (i.e., taking an employee out of a training program because of poor performance but you granted a WGI only 4 months ago).
- Statistical evidence does not support your action (i.e., statistics show you only promote employees under age 40 to the GM-13 level).
- Inequitable or inconsistent treatment of employees. For example, one employee's leave is approved and the other employee's leave was denied because of a heavy workload, but there is no apparent reason for the differing treatment.
- Disparate impact – a policy or practice results in an adverse impact on a protected class (i.e., statistics show your recruitment methods do not attract handicap employees).

The complainant does not have to prove deliberate or willful discrimination; discrimination can be inferred by showing that there was differing treatment or that management cannot articulate a legitimate reason for its action.

If discrimination can be inferred, the employee may be granted full relief which many times results in reinstatement or promotion, back pay and attorney fees depending on the type of complaint. Most of the time it takes several years before a decision is reached and by that time, the relief is normally substantial not to mention the number of hours you and the employee will spend discussing the case with your respective representative.

Settlement of EEO Complaints

First of all, in agreeing to settlement, the Air Force makes no admission of wrongdoing, guilt, or liability in discrimination no fault. Informal settlement may be attempted at any point in the complaint process and is encouraged as and most successful as early in the process as possible. It may be done at the counseling state, prior to investigation, after investigation, or any time prior to the hearing.

How Do I Know Whether to Settle?

At the informal (counseling) stage, the EEO Counselor will discuss settlement with you. At the formal (complaint) stage, the Chief EEO Counselor may discuss with you whether settlement is recommended base on their analysis of the case and familiarity with EEO case law. Of course, you are not expected to offer a substantive settlement on a frivolous or a well-substantiated case; however there are still creative ways to resolve even those cases. It is possible that you can offer a training course, an assignment, etc., to resolve the complaint. Settling a complaint may be better than spending several thousand dollars to reach a finding of no discrimination.



Why Should I Attempt to Settle a Complaint?

- Resolves complaints expeditiously.

It currently takes 2 or 3 years for an EEO case to complete the administrative process.

- Reduces the costs of EEO complaint processing and adjudication.

An investigation costs approximately \$2,500 - \$5,000 alone and an average EEO case will cost the Air Force an approximately of \$75,000 to process if it goes to a hearing before the Equal Employment Opportunity Commission. Informal settlement attempts are encouraged during the informal (counseling) stage and prior to a costly investigation.

- Allows greater participation / involvement of program officials.

It gives you an opportunity to take another look at the case. If the employee pursues formal action, the Chief EEO Counselor will contact you to discuss the merits of the case, brief you on EEO case law, obtain your views and concerns, and discuss resolution possibilities.

- Minimizes disruption / reduces office tension

Both you and the employee will spend many hours discussing the case with your respective representatives and other officials. Other employees who are not involved will spend time speculating about the merits of the case.

Misconceptions About Informal Settlement

- Admission of Guilt. A settlement is a no-fault agreement and this is clearly stated in the agreement. It is not an admission of guilt or wrong-doing.
- Everyone will file an EEO complaint against me if I give in on this one. There is no guarantee who will or will not file a discrimination complaint.

Settlement

Settlement may be a combination of any of the following:

Promotion
Detail
Training
Priority Consideration
Reassignment
Awards
Individual Development Plan
Back Pay
Attorney Fees
Destroy Records / Purge Files



This is not an all inclusive list of types of settlement. You may think of many other ways to settle a case.

EEO COMPLAINT STEPS

When analyzing an EEO case, the following 3-step process is used:

STEP 1 – The complainant must establish a Prima Facie Case.

- They are a member of a protected class (race, sex, age, handicap, religion, national origin)
- They are treated differently from person otherwise similarly situated who are not members of the class.

STEP 2 – The burden of shifts to the Agency to provide some legitimate, nondiscriminatory reason for the action(s) taken.

- These reasons must be supported by clear and convincing evidence in the record.

STEP 3 – The complainant is then given a chance to prove that the reasons given by the agency for the action were a pretext (or cover-up) for discrimination.

- To prove disparate treatment, a complainant need not establish that the Agency deliberately or willfully discriminated. As indicated earlier, discriminatory motive can be inferred from differing treatment or inability to articulate a legitimate reason for a management action. Statistical evidence can also be used to show pretext, or disparate impact.

If Settlement is not Reached

The EEO Manager reviews a counselor's report and reviews the formal complaint for administrative processing. All costs incurred are borne through the organization named in complaint. Formal complaints are investigated by the Office of Complaints Investigation (OCI).

Uncertainties About the Investigation



- Witness Statements

There may be surprise statements, contradictory, or damaging remarks, or unexpected witnesses.

- Problems Encountered with Lingering Complaint

It is not always easy to recall certain details; information may be missing; or some witnesses may no longer be available to testify.

- OCI Recommendations

It is not always clear what issue OCI will give the most weight in making its decision. Live testimony is usually given more weight than the evidence of record. Sometimes statistics alone can lose a case. These uncertainties add to the reasons why it is better to settle a complaint at an early stage in the process, whenever possible.



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